

REMARKS

This reply is intended to be completely responsive to the Non-Final Office Action dated June 4, 2009.

Status

Claims 1, 3, 5-7, 9-13, 15, 18, 21-23, 25, 27, 28, 30, 32, 34, 37-39, 41, 43, 61, 63, 65, 66 and 68-70 are pending in this Application.

Claims 1, 3, 5-7, 9, 11, 13, 21, 23, 25, 27, 30, 32, 34, 38, 39, 41, 61, 63, 68, and 69 stand rejected, and claims 10, 12, 18, 22, 28, 37, 43, 66, and 70 stand withdrawn.

With this amendment, independent claims 1, 7, 11, 21, 32, 39 and 61 and dependent claim 3 have been amended, and claims 6, 15 and 65 have been cancelled.

Applicant has amended each of the independent claims to recite subject matter that the Examiner has indicated is allowable. Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claim Rejections – 35 U.S.C. § 112

On pages 3 and 4 of the Office Action, the Examiner rejected claims 3, 21, 23, 25, 27 and 30 under 35 U.S.C. § 112, first paragraph as failing to comply with the enablement requirement. Applicant respectfully asserts that claims 3 and 21, as amended, comply with 35 U.S.C. § 112, first paragraph.

Claim 3, as amended, recites “wherein the structure prevents rotation of at least a portion of the disc core relative to the prosthesis endplate,” and claim 21, as amended, recites “wherein the recess prevents rotation of at least a portion of the disc core relative to the first prosthesis endplate.” Applicant respectfully asserts that claims 3 and 21 are enabled by the specification. For example, paragraph [0041], referring to FIG. 10, states “core 46 fits into and laterally interlocks with a structure shown as recess 50 and corresponding flange 51 in endplate tray 12.” See also, FIG. 9 and 10.

Accordingly, Applicant respectfully asserts that the specification as filed, including the portions discussed above, enable a person skilled in the art to make and use the invention of claims 3, 21, 23, 25, 27 and 30.

Allowable Subject Matter

In the Office Action mailed June 4, 2009, the Examiner indicated that the subject matter of dependent claims 6, 15 and 65 is allowable. Applicant has amended independent claims 1, 7, 11, 21, 32, and 39 to recite the subject matter of claims 6 and 15 indicated to be allowable by the Examiner, and Applicant has amended independent claim 61 to recite the subject matter of claim 65 indicated to be allowable by the Examiner. Applicant respectfully asserts that independent claims 1, 7, 11, 21, 32, 39, and 61, as amended, and the corresponding dependent claims recite a combination of subject matter that is patentable over the references of record. By amending the independent claims to include subject matter indicated to be allowable by the Examiner, Applicant does not indicate agreement or acquiescence with the rejection of claims 1, 3, 5-7, 9, 11, 13, 21, 23, 25, 27, 30, 32, 34, 38, 39, 41, 61, 63, 68, and 69. Independent claims 1, 7, 11, 21, 32, 39 and 61 have been amended only to obtain prompt allowance of claims reciting subject matter that the Examiner has indicated is allowable. Specifically, Applicant reserves the right to demonstrate prior inventorship of claims 32, 34, 38, 39 and 41 relative to the references used by the Examiner in the rejections under 35 U.S.C. § 102(e).

Withdrawn Claims

Dependent claims 10, 12, 18, 22, 28, 37, 43, 66, and 70 stand withdrawn. Independent claims 7, 11, 21, 32, 39, and 61, from which claims 10, 12, 18, 22, 28, 37, 43, 66, and 70 depend, respectively, have been amended to recite subject matter indicated to be allowable by the Examiner. Upon allowance of the underlying generic, independent claims, Applicant requests consideration and allowance of currently withdrawn dependent claims 10, 12, 18, 22, 28, 37, 43, 66, and 70.

Conclusion

Claims 1, 3, 5-7, 9-13, 15, 18, 21-23, 25, 27, 28, 30, 32, 34, 37-39, 41, 43, 61, 63, 65, 66 and 68-70 are pending in the present Application. Claims 10, 12, 18, 22, 28, 37, 43, 66, and 70 stand withdrawn. With this amendment, claims 1, 7, 11, 21, 32, 39, and 61 have been amended to include subject matter indicated to be allowable by the Examiner, and claims 6, 15 and 65 have been cancelled. Favorable reconsideration of the application, as amended, is respectfully requested. In addition, because each of the withdrawn claims depend from one of the independent claims amended to recite allowable subject matter, Applicant requests consideration and allowance of the withdrawn claims.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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